Supreme Court, U.S.
FILED

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No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

KARRIS A. BILAL,

Petitioner,

vs.

ILLINOIS SUPREME COURT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Whether it is unconstitutional for a state to suspend an attorney's license to practice law when the state procedure disallowed any hearing or consideration of attorney's raised Due Process Clause arguments, the entire proceeding was tainted by prosecutorial misconduct, and there was an infirmity of proof establishing the alleged misconduct.

PARTIES

The parties to this action are set forth in the caption.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that this Court grant a writ of certiorari to review the judgment and opinion below.

OPINIONS BELOW

The opinion and recommendation of the Review Board appears at Appendix A to the petition and is reported. The order of the State Supreme Court denying review appears at Appendix B and is reported.

JURISDICTION

The date on which the Illinois Supreme Court denied my timely petition for leave to appeal was January 20, 2009. A copy of the order denying my petition appears at Appendix B. Accordingly, the jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

STATUTES AND RULES INVOLVED

U.S.C.A. Const. Amend. XIV, §1, provides: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Art. I, §II of the Illinois Constitution states: No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection.

STATEMENT OF THE CASE

The petitioner is an attorney, who had been licensed to practice law in Illinois since 2000. He has no prior discipline and there are no allegations or evidence that he has stolen, conspired to steal, or misappropriated any funds.

The petitioner represented his step-mother in an action to obtain guardianship of her aunt. Petitioner, relying upon a valid power of attorney presented to him by his step-mother, represented his step-mother's aunt by drafting a living trust and conducting a real estate closing.

Petitioner fought strenuously on behalf of his step-mother (his client) in the guardianship proceedings because his step-mother was desperate to keep her aunt from being placed and kept at the state's designated nursing home, where she was not being bathed and cared for properly, and wrongfully restricted from her niece.

Petitioner believed that he was acting in his step-mother's aunt's best interests by helping his step-mother resist the Public Guardian's efforts to keep her aunt from spending her remaining days in the company of his step-mother. Petitioner believed notwithstanding any allegations of financial mismanagement or exploitation against his step-mother, her aunt undoubtedly expressed an interest and preferred to live in his step-mother's home than in the state's designated nursing home – where she was not being bathed and cared for properly.

The subject matter began with a letter sent directly to Wendy Muchman (senior counsel of the ARDC) from Dawn Lawkowski (petitioner's opposing counsel in a related probate matter), who is an attorney for the Cook County Public Guardian's Office. Ms. Lawkowski's letter was printed on the official letterhead of the Cook County Public Guardian.

On August 10, 2004, shortly before Ms. Lawkowski sent her letter to Ms. Muchman, she threatened petitioner with her office in the hall during a court break – stating to petitioner that it "behooves" him to cooperate with the Public Guardian's Office.

In Ms. Lawkowski's letter, she stated that she believed petitioner's representation of his client (his step-mother) in the on-going probate proceeding presented a conflict of interest, and she also accused petitioner's client of wrongdoing. More precisely, Ms. Lawkowski's letter, asserted

that petitioner's former representation of his step-mother's aunt in a real estate closing presented a conflict of interest in the guardianship proceeding.

However, just seven days prior, the Court had advised the parties in the probate proceeding, including Ms. Lawkowski, that any familial relationship between petitioner and his step-mother was not a basis for finding a conflict of interest. The following is an excerpt from a transcript of the probate proceedings on August 10, 2004:

Ms. Hogan: Judge, excuse me, if I might, I'm concerned, I might as well raise it now as opposed to later, that counsel Mr. Bilal if he represented Ms. Hodges and he in fact represents the petitioner, there may be an issue there about conflict of interest

Ms. Lawkowski: Is he also a family member, Judge? We're also concerned about that.

Petitioner: That's not even relevant, Judge. I move to strike that.

Ms. Lawkowski: It's a concern that we have.

Ms. Hogan: It's my statement. I don't think he can strike that.

The Court: I don't think any blood or marriage relationship that Mr. Bilal has to his client has any bearing on conflict of interest. It simply doesn't, in my opinion. However, if he once represented the alleged disabled person and at other times represented his current client in her capacity and they have any conflict of interest to the issues of

this case, a problem could arise. But I don't see it right now.

Ms. Hogan: But he did say he did the trust for Mrs. Hodges. That was my concern.

The Court: I understand. It's possible, if things take certain turns or twists, that there could be for that reason or the other reasons such as being a substantial material witness at a necessary hearing that might require him to step down. But I don't see it right now.

Neither Ms. Lawkowski nor any other opposing party filed any motions to have petitioner disqualified for the alleged conflict, and the Court never advised petitioner otherwise. Yet, on August 17, 2004, Ms. Lawkowski chose to send her letter to the ARDC – alleging that petitioner engaged in conflicts of interests.

The Administrator filed a three-count complaint. Counts II and III charged that petitioner breached his fiduciary duty to his step-mother's aunt and engaged in conflicts of interest relating to his representations of his step-mother and his step-mother's aunt. Count III also alleged that petitioner allowed his client to make misrepresentations to the Court in the probate proceeding. Count I of the Administrator's complaint alleged that petitioner made misrepresentations to the Character and Fitness Committee in 1999 relative to an arrest, in which the charges against petitioner were dismissed shortly after they were instituted.

While prosecuting the allegations of the complaint, the record reflects that Marcia Wolf (ARDC Administrator) inexplicably conducted a group meeting with Charles Goldbert (counsel for the Public Guardian) and three witnesses (Dawn Lawkowski, Thomas Brennan, and Joan Stewart), who offered perjured, material testimony at the hearing. At the disciplinary hearing, the Chair disallowed questions and impeachment concerning the meeting – stating that we were not going to go on a fishing expedition against the Public Guardian's Office.

In addition, official court transcripts were manipulated to support the false allegations in Count III of the complaint and assist the Administrator's witnesses in offering false testimony at the hearing. The Panels relied heavily upon the manipulated transcripts and perjured testimony elicited by the Administrator.

The Administrator did not disclose her key witness (Kim Petrisha) to Count I until shortly before the disciplinary hearing. The petitioner filed a motion to bar Ms. Petrisha's testimony, which was denied the day of the hearing. The petitioner did not have an opportunity to depose Ms. Petrisha, meaningfully cross examine her, or time to present evidence to refute Ms. Petrisha's testimony – which was that she remembered the 1999 arrest.

Dr. Veres was the Administrator's witness, who offered testimony at the hearing concerning the timing of Ms. Hodges' mental incapacity. The Administrator did not produce Dr. Veres at the

hearing. The Panels relied upon Dr. Veres' telephonic and unsworn testimony.

At the hearing, the petitioner was precluded from calling his key witness (his step-mother – Rachell), who had personal knowledge of her aunt's mental capacity, wishes and desires. Ms. Hodges stated that she was very fond of Rachell and in her 2003 power of attorney, selected Rachell to be her guardian, if she ever needed one.

The Administrator did not provide petitioner with her voluminous exhibits used at the hearing, until the date of the hearing. The exhibits included what the Administrator purported to be the certified record from the probate proceeding. The record contained various documents relied upon by the Panels which were not actually filed as claimed.

The petitioner was not allowed the opportunity to appear before the Inquiry Panel to present his evidence. The petitioner's raised constitutional arguments concerning violations of the Due Process Clause and prosecutorial misconduct were not addressed in the state proceedings.

The Hearing Board found that the Administrator failed to present any evidence that the 2003 POA was invalid. The Review Board also found that the 2003 POA, by its own terms, was effective when petitioner received it.

The Hearing Board further found that the Administrator failed to present sufficient evidence that petitioner's preparation of the 2004 POA and living trust or his representation of his step-

mother's aunt during the sale of her home breached any fiduciary duty.

The Hearing Board also found that the Administrator had not proven that petitioner breached his fiduciary duty to his step-mother's aunt or that he had represented her aunt when the representation may be materially limited by petitioner's responsibilities to another client or a third party or by his own interests. The Hearing Board found that the Administrator had proven the remaining charges.

The Hearing Board recommended that petitioner be suspended for a year and a half and until he completes the Illinois Professional Responsibility Institute. The Review Board upheld the Hearing Board's factual findings and recommended discipline in relation to the charges of misconduct.

Both the petitioner and Administrator filed a petition for leave to file exceptions with the Illinois Supreme Court. The petitioner requested that the Illinois Supreme Court find no misconduct, citing clear violations of the Due Process Clause and prosecutorial misconduct. The Administrator petitioned to have petitioner suspended for 3 years and until further order of court.

On January 20, 2009, without addressing the merits, the Illinois Supreme Court denied petitioner a hearing on his Due Process Clause arguments and ordered the suspension of the petitioner's law license for a year and a half and required him to complete the Illinois Professional

Responsibility Institute Course – and to reimburse the Client Protection Program Trust Fund for payments made by the Administrator in prosecuting the subject complaint.

REASONS FOR GRANTING THE PETITION

I. IT IS OF NATIONAL IMPORTANCE TO A PROPER FUNCTIONING JUDICIARY THAT ATTORNEYS ZEALOUSLY AND FREELY REPRESENT CLIENTS WITHOUT THE FEAR OF BEING WRONGFULLY DEPRIVED OF THEIR LICENSES THROUGH PROCEEDINGS TAINTED WITH PROSECUTORIAL MISCONDUCT

This Court should grant this petition because a state court of last resort has ordered the suspension of an attorney's license without considering the merits of the asserted charges, the instances of prosecutorial misconduct, and petitioner's raised Due Process Clause arguments.

There were three charges or counts levied against the petitioner. The second count was dismissed. The first and third counts were contrived by the Administrator through prosecutorial misconduct. More precisely, although the Administrator was aware of Ms. Petrisha at the time that she filed her complaint, she did not disclose the identity of Ms. Petrisha until shortly

before the hearing. Not disclosing Ms. Petrisha precluded petitioner the opportunity to depose Ms. Petrisha or present evidence to refute her testimony, which was heavily relied upon by the Panels to support Count I.

Count III was the product of manipulated official court transcripts and perjured testimony, which was knowingly offered by the Administrator. This Court has clearly stated that perjured testimony knowingly offered by a prosecutor violates due process. See *Mooney v. Holahan*, 294 U.S. 103, 112 (1935) (providing that when a conviction is obtained by the presentation of testimony known to the prosecuting authorities to have been perjured, due process is violated. The clause "cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance . . . is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.")

Accordingly, the petitioner's law license was essentially suspended by the Illinois Supreme Court for a year and a half because the petitioner did not report an arrest, which took place in 1999. But this Court, in *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (U.S. 1957), held that an arrest

in which an attorney was neither tried nor convicted cannot be said to raise substantial doubts about the attorney's present good moral character.

In fact, in attorney disciplinary matters concerning clear conflicts of interest and significantly more egregious instances of misconduct, a censure was imposed. See *In re Kelleher*, 93 SH 102 (Review Board Report approved in M.R. 11701, December 1, 1995); see also *In re Pavilos*, 95 CH 504 (Hearing Board Report approved in M.R. 12971, November 26, 1996).

The petitioner's reputation has been damaged, his law practice severely disrupted, and his ability to earn a living practicing law to help support his wife and three minor children (ages 1, 3, and 6) has been arbitrarily taken. If this Court does not grant this petition, the petitioner will be deprived of his law license (without any court considering the merits of his constitutional claims) and no court will address the inexplicable prosecutorial misconduct apparent in the record.

A. The Procedure Before The Illinois Panels and Supreme Court Was Patently Unfair And So Lacking In Opportunity To Be Heard As To Constitute A Deprivation Of Due Process

The Fourteenth Amendment of the United States Constitution states that "No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." See *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586 (U.S.Ga. 1971) (where the Court found that the unwarranted suspension of a license without granting a fair and meaningful hearing would violate the Due Process Clause).

In this case, the procedure was tainted from the inception and clearly deprived petitioner of a fair and meaningful hearing. First, Ms. Wolf (the ARDC Administrator), conducted a group meeting, with at least three of the witnesses (Dawn Lawkowski, Thomas Brennan, and Joan Stewart). At that meeting Ms. Wolf inexplicably divulged privileged matters concerning petitioner and discussed other matters concerning the allegations in the Complaint – to assist the witnesses who participated in the meeting in offering perjured testimony at the hearing. And at the hearing, the petitioner was precluded from asking questions about the meeting and impeaching the witnesses on their inconsistent statements relative to the meeting – the Chair of the Panel deemed such questions and impeachment as a fishing expedition against the Public Guardian's Office.

Second, the Panels relied upon manipulated, official court transcripts and a purported certified record of the probate proceeding. As an illustration, the August 10, 2004, transcript (in which petitioner was provided different versions)

was doctored to manufacture statements in the probate proceeding to support the false assertions contained in Count III of the Administrator's complaint. The three witnesses, who participated in the group meeting with the Administrator, testified at the hearing consistent with the altered version of the August 10, 2004 transcript.

Third, the Administrator did not disclose a key witness, which deprived petitioner the right to meaningfully cross examine the surprise witness and present evidence to refute the witness' testimony. This was critical because Count I was manufactured by the Administrator, and there was not a shred of other evidence offered at the hearing to support the first count.

Fourth, the Administrator failed to produce her own witness at the hearing, which caused the individual who purported to be Dr. Veres over the telephone, not to be sworn in at the hearing. This was critical because the statements were text book hearsay and according to the court reporter – not made under oath.

Fifth, the petitioner was prevented from calling his key witness (Rachell), who had personal knowledge of Ms. Hodges' mental capacity, wishes and desires. Moreover, the Panel failed to consider Ms. Hodges' stated wishes contained in her 2003 POA – that if she ever needed a guardian, she appointed Rachell as her guardian. It was fundamentally unfair for the Panel to bar Rachell from testifying on matters relevant to the charges being brought against petitioner.

Sixth, the Administrator failed to provide petitioner with her voluminous hearing exhibits, until the date of the hearing. This was critical because the purported certified record from the probate proceeding contained various documents relied upon by the Panel, which were in fact not filed as claimed in the alleged certified record.

Finally, petitioner was not allowed the opportunity to appear before the Inquiry Panel to present his evidence. And his arguments concerning violations of the Due Process Clause were not addressed in any of the State proceedings. Accordingly, the State procedure and hearing were patently unfair and lacking in opportunity to be heard as to constitute a deprivation of due process.

B. There Was An Infirmity Of Proof Establishing The Alleged Misconduct As To Give Rise To The Clear Conviction That This Court Should Not, Consistent With Its Duty, Accept As Final The Irrational Conclusion By The State Supreme Court

This Court has a special role in protecting constitutional rights. This matter concerns state actors who have abused the power of their offices to manipulate official court transcripts and engage in other clearly unethical conduct, to create a facially valid pretext for wrongfully depriving an attorney of his law license.

As an illustration, there was no evidence offered at the hearing regarding petitioner's state

of mind when he completed the bar questionnaires or even a motive for him to make the alleged misstatement. In fact, there was evidence that immediately upon attaining his LL.M. petitioner accepted a full-time, in-house position, which did not require him to have an Illinois license. Moreover, the undisclosed, surprise witness (Kim Patricia) only testified that she remembered an arrest dating back to 1999, and that petitioner was present – nothing regarding his state of mind at the time he completed his bar questionnaires.

Regarding the alleged conflict of interest – the circuit court judge stated on the record that she did not perceive there to be a conflict, and she never stated otherwise to petitioner. At best there was an obscure potential conflict, and at worse, the claimed conflict was contrived by petitioner's opposing counsel and pursued by the Administrator for other improper purposes. In any case, there were no allegations or evidence that petitioner stole, conspired to steal, benefited from, or misappropriated any funds – to warrant the Illinois Supreme Court's harsh discipline.

For all of the foregoing reasons herein and contained in the record, there was an infirmity of proof that this Court should not, consistent with its duty, allow this arbitrary and unwarranted decision by the state Supreme Court (to suspend petitioner's law license and livelihood for a year and a half) to stand.

C. The Illinois Supreme Court's Refusal To Consider Petitioner's Due Process

Clause Arguments, But Suspend Petitioner's Law License Conflicts With This Court's Opinion In Schware v. Board of Bar Examiners of New Mexico

This Court has held that it is unconstitutional for a state to deprive an attorney the right to practice law when there is no rational, valid basis for doing so. As an illustration, in *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796(U.S.1957), the Supreme Court of the State of New Mexico, denied an applicant's application to take the bar examination, and this Court granted certiorari. This Court held that under the circumstances the applicant's prior arrest record and use of aliases could not be said to raise substantial doubts about his present good moral character, and refusing him the right to qualify for practice of law constituted a denial of due process. *Id.*

Moreover, this Court held that state officers cannot exclude an applicant for admission to the bar when there is no rational basis for their finding that he fails to meet the standards of qualification or when their actions are invidiously discriminatory – and the mere fact that a man may have been arrested years ago has little, if any, probative value in showing that he has engaged in such misconduct as not to have the requisite good

moral character to take the state bar examination or practice law; especially when formal charges are not filed against the alleged arrested person and he was released without trial, thus, whatever probative force the arrest may have had is normally dissipated. *Id.*

In *Schware v. Board of Bar Examiners of New Mexico*, this Court stated "[e]ven in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory." *Id.* And "[r]egardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace." *Id.*

Ultimately in *Schware*, this Court reversed and remanded the matter with directions, and found that the denial of a license to practice law on the ground that the applicant is not of good moral character is a deprivation of liberty and that "the evidence upon which the State relies - the arrests for offenses for which petitioner was neither tried nor convicted, the use of an assumed name many years ago, and membership in the Communist Party during the 1930's - cannot be said to raise substantial doubts about his present good moral character" – and there was no evidence in the record that rationally justified a finding that

Schware was presently morally unfit to practice law. *Id.*

Similarly, in this matter, there was no rational or valid basis for the Illinois Supreme Court to decline to consider petitioner's Due Process Clause arguments and apparent instances of prosecutorial misconduct, but order the suspension of petitioner's law license – for a year and a half.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Karris A. Bilal
Petitioner

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Dated: April 19, 2009

Appendix A
App. 1

DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

Filed September 5, 2008

In re Karris A. Bilal
Respondent-Appellant,

Commission No. 05 CH 87

Synopsis of Review Board Report and Recommendation (September 2008)

Bilal was charged in a three-count complaint with engaging in conduct involving fraud, dishonesty, deceit or misrepresentation and conduct that tends to defeat the administration of justice or bring the courts or legal profession into disrepute. Count I, which arose out of Bilal's failure to disclose an arrest on his bar application, also alleged that Bilal made a statement of material fact in connection with his bar application that he knew or should have known was false. Count II, which involved Bilal's preparation of a durable power of attorney and living trust for Georgia Hodges and his representation of the seller in the sale of Hodges's home, also alleged that Bilal breached a fiduciary duty and engaged in a conflict of interest. Count III, which concerned Bilal's representation of his stepmother in seeking to be declared Hodges's guardian, also alleged that Bilal engaged in a conflict of interest. Bilal denied misconduct and some of the facts of the complaint.

The Hearing Board found that the Administrator had not proven the misconduct charged in Count II or the

charge in Count III that Bilal had engaged in conduct involving dishonesty. The Hearing Board found that the Administrator had proven the remaining charges of misconduct. The Hearing Board recommended that Bilal be suspended for eighteen (18) months and until he completes the Illinois Professional Responsibility Institute.

The case was before the Review Board on Bilal's exceptions. Bilal objected to the Hearing Board's findings of misconduct. The Administrator objected to the Hearing Board's failure to find misconduct as to Count II. Both parties challenged the Hearing Board's sanction recommendation.

The Review Board upheld the Hearing Board's factual findings and its findings in relation to the charges of misconduct. The Review Board also upheld the Hearing Board's sanction recommendation.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

KARRIS A. BILAL,

Commission No. 05 CH 87

Respondent-Appellant,

No. 6271954.

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

This case was heard on the Administrator-Appellee's three-count complaint against Respondent-Appellant, Karris A. Bilal. Count I involved Bilal's failure to disclose an arrest on his application for admission to the bar. Count I charged that Bilal made a statement of material fact in connection with his application that he knew or reasonably should have known was false in violation of Rule 8.1(a)(1) of the Illinois Rules of Professional Conduct (134 Ill. 2d R. 8.1(a)(1)). Count II involved Bilal's preparation of a durable power of attorney and living trust for Georgia Hodges and representation of the seller in the sale of Hodges's home. Count II charged that Bilal breached a fiduciary duty and engaged in a conflict of interest in violation of Rule 1.7(b) (134 Ill. 2d R. 1.7(b)). Count III concerned Bilal's representation of his stepmother in seeking to be declared Hodges's guardian. Count

III alleged that Bilal engaged in a conflict of interest in violation of Rule 1.9(a)(1) (134 Ill. 2d R. 1.9(a)(1)). Each count also charged that Bilal engaged in conduct involving fraud, dishonesty, deceit or misrepresentation in violation of Rule 8.4(a)(4) (210 Ill. 2d R. 8.4(a)(4)) and conduct that tends to defeat the administration of justice or bring the courts or legal profession into disrepute in violation of Supreme Court Rule 770 (210 Ill. 2d R. 770). Bilal denied misconduct and some of the facts alleged in the complaint.

The Hearing Board found that Bilal engaged in the misconduct charged in Counts I and III, except the charge in Count III that Bilal engaged in conduct involving dishonesty. As to Count II, the Hearing Board found that the Administrator had not presented clear and convincing evidence that Bilal had engaged in any of the misconduct charged. The Hearing Board recommended that Bilal be suspended for eighteen (18) months and until he completes the Illinois Professional Responsibility Institute course.

The case is before the Review Board on the Bilal's exceptions. He objects to the Hearing Board's findings of misconduct and sanction recommendation, seeking a reprimand or censure if the findings of misconduct are upheld. The Administrator challenges the Hearing Board's failure to find misconduct as to Count II. The Administrator also objects to the Hearing Board's sanction recommendation and seeks to have the Review Board recommend a suspension for three years and until further order of the Court (UFO).

As a preliminary matter, the statement of facts in Bilal's brief does not comply with ARDC Rule 302(f) (Dis. Com. R. 302(f)). Rule 302(f) directs that the appellant's statement of facts is to contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the record. The rules relating to the form and content of briefs should be followed. *See In re Morton*, No. 98 CH 24 (Review Board October 30, 2000), *approved and confirmed*, No. M.R. 17272 (March 22, 2001); *In re Rheinstrom*, No. 93 CH 449 (Review Board Sept. 8, 1995), *approved and confirmed*, No. M.R. 11765 (Jan. 23, 1996). The Review Board can strike non-conforming briefs, or portions of briefs, or disregard statements in briefs that do not conform to the rules. ARDC Rule 302(i) (Dis. Com. R. 302(i)). Bilal's statement of facts is stricken, for failure to comply with ARDC Rule 302(f).

The Review Board has considered the record independently and bases this Report and Recommendation on that independent review.

Bilal was licensed to practice law in Illinois in 2000. He has no prior discipline. Bilal's practice consisted primarily of foreclosure defense and civil and commercial litigation. He testified that he tried to give back to the community. He donates to charitable organizations and prepares tax returns on a *pro bono* basis.

Bilal first took the Illinois bar examination in 1998. He did not pass. Before ultimately passing, Bilal took the bar examination four more times. Each time, Bilal filed an application to take the examination. Each application included an Additional Questionnaire, which Bilal completed and signed.

On each Additional Questionnaire, Bilal answered "no" to question 16. Question 16 inquired whether, since filing his or her most recent application, the applicant had been "warned, detained, restrained, cited, taken into custody, arrested, accused, formally or informally, or convicted of the violation of any law or ordinance?" The following instruction appeared immediately above question 16 on each questionnaire:

"NOTE: In answering Questions 16, 17, and 18, you are advised that no statute, court order, or legal proceeding withholding adjudication, expunging the information required herein from any record, sealing the records which contained the information required herein, or purporting to authorize any person to deny the existence of any such matter shall excuse less than full disclosure."

Each questionnaire also contained a statement, immediately prior to Bilal's notarized signature, that read:

"I have read the foregoing document and have answered all questions fully and frankly. The answers ? are complete and true of my own knowledge. I understand that I must immediately disclose to the

Character and Fitness Committee any facts occurring after the date of the submission of this document which may bear on my character and fitness."

On March 31, 1999, Bilal was arrested on charges of solicitation of a sex act. He did not disclose this incident on any of the materials he submitted to the Committee on Character and Fitness, including the Additional Questionnaire signed on April 29, 1999, one month after the incident.

On March 31, 1999, Cook County Sheriff's Police Officer Kim Petrisha was working as an undercover prostitute decoy. About 12:45 a.m., a white limousine containing five men approached her. The men spoke with Petrisha about engaging in a sex act in return for money. Petrisha spoke with all the men. She testified that Bilal was one of them. Other officers arrested the five men. The charges against Bilal were ultimately dismissed.

Bilal denied having solicited sex from Petrisha. He also testified that, in his mind, he had not been arrested. After initiation of the disciplinary proceedings, Bilal obtained an order expunging the record of the incident.

Rachell Bilal (Rachell) is the niece of Georgia Hodges. Hodges was 79 years old at the time of the incidents at issue here. Rachell is married to Bilal's father, Rafeeq Bilal.

On August 4, 2003, Hodges signed an Illinois Statutory Short Form Power of Attorney for Property (2003

POA) appointing Rachell as her agent. The 2003 POA gave the agent broad powers, specifically including the power to engage in real estate transactions and authority to exercise some powers of the principal with respect to estates and trusts. Bilal was not involved in preparing the 2003 POA; Rachell prepared it. In spring 2003, Hodges's doctor, Dr. Christine Veres, had recommended that Rachell obtain a power of attorney, so she could assist Hodges in her affairs.

Rachell gave Bilal the 2003 POA. Subsequently, Bilal drafted a separate document, a Durable Power of Attorney (2004 DPOA). Bilal gave the unexecuted 2004 DPOA to Rachell, who had it executed on June 30, 2004. The 2004 DPOA gave Rachell broad powers to deal with Hodges's property, including the power to make gifts of Hodges's property and to sell real estate owned by Hodges. This power expressly included the house in which Hodges was living, which was being sold. Rachell told Bilal that the house was being sold for the purpose of taking care of Hodges. Bilal testified that he prepared the 2004 DPOA at the request of the title company in connection with the sale.

Bilal also prepared a living trust, similarly dated June 30, 2004, in which Hodges appointed Rachell as trustee. Rachell signed this document for Hodges pursuant to the power of attorney. Hodges's property was placed in the trust. Under the terms of the trust, the trustee was to pay the grantor any trust income or principal the grantor requested during her lifetime. Upon the grantor's death, the trustee was to

give the grantor's tangible personal property to charity and distribute the remainder of the trust in equal shares to Hodges's brothers and sisters, Rachell, and Rachell's son.

Bilal also prepared a warranty deed for the sale of Hodges's home. Hodges signed the deed on July 1, 2004. Hodges was not present at the closing. Rachell signed Hodges's name to the documents signed at the closing. Bilal represented the seller at the closing and received attorney fees of $5,000. The house was sold for $240,000. Bilal did not advise Rachell concerning the proceeds of the sale of Hodges's house.

Bilal did not meet with Hodges before preparing the 2004 DPOA, the trust, or the deed. He did not attempt to determine whether Hodges had capacity to sign those documents or whether doing so was in her best interests. Other evidence presented at hearing, including testimony from Dr. Veres, indicated that Hodges had dementia as of at least January 2003 and would not have been competent to sign the documents. Bilal did not give Hodges any advice concerning the documents. Hodges's signatures were notarized on the 2003 POA, 2004 DPOA, and deed.

On July 28, 2004, at Rachell's request, Dr. Veres prepared a letter stating that Hodges had declined physically and cognitively over the preceding two years, showed impaired judgment, and could not handle business affairs independently. Dr. Veres also opined that Ms. Hodges needed 24-hour supervision and could no longer live alone safely. Rachell wanted

Hodges to live with her. Dr. Veres's opinion remained unchanged after examining Hodges, who was then hospitalized, on August 4, 2004.

On August 5, 2004, Rachell filed a petition seeking to be declared Hodges's guardian. Bilal represented Rachell in the guardianship proceedings. Before these proceedings were initiated, Bilal had never met Hodges.

Hodges's siblings became concerned about Rachell's conduct. Therefore, Hodges's sister contacted the Cook County Public Guardian's office. The Public Guardian opposed Rachell's petition to be declared Hodges's guardian and sought to be appointed guardian instead. Joan Stewart, a registered nurse employed by the Public Guardian's office, had previously done an investigation, including a review of Hodges's records, talking with hospital staff, and meeting with Hodges. Stewart considered Hodges incapable of managing her personal life or financial affairs.

The probate court appointed attorney Patricia Hogan as guardian *ad litem* for Hodges. Hogan visited Hodges at the hospital on August 7 or 8, 2004. Hogan testified that Hodges was very confused and did not know where she was. Hodges did not recall signing a power of attorney and did not know that her home had been sold. However, Hodges expressed great fondness for Rachell. Hogan concluded that Hodges would benefit from the appointment of a plenary guardian of her person and her estate.

At the request of the probate court, on August 11, 2004, Stewart went to Rachell's house to see if it would be an appropriate place for Hodges to live. Rachell and Rafeeq told Stewart of their plans to remodel the house to accommodate Hodges. At that time, no changes had been made, except that a new roof was being placed on the house. There was also a bed in the dining room that Rachell and Rafeeq said would eventually be used by their son, so Hodges could have his bedroom.

On August 12, 2004, the Public Guardian was appointed Hodges's temporary guardian. Hodges was discharged from the hospital to a nursing home. Hogan opposed sending Hodges to live with Rachell. Hogan believed that, given the level of care she required, Hodges needed to be in a nursing home. Reportedly, Rachell and Rafeeq had attempted to remove Hodges from the nursing home and had interfered with her care there.

Hogan was also concerned because there were ongoing issues about Rachell's dealings with Hodges's money. There was a discrepancy between the amount of the proceeds of the sale of Hodges's home and the funds located thereafter; this raised concerns that Rachell may have misappropriated funds. It appeared that some of Hodges's money had been used to improve Rachell's house. Rachell had represented to the court that only $10,000 had been used to prepare her home for Hodges to live there. The court directed Rachell to present an informal accounting and a plan for Hodges's care. The judge also directed Bilal to

present the powers of attorney, trust document, and documents pertaining to the sale of Hodges's home. An informal accounting was the only thing provided. This document suggested that funds were missing.[1] There were also allegations that Rachell had misappropriated other funds belonging to Hodges.

Given these factors and the concerns of Hodges's siblings over Rachell's behavior and motives, the probate court entered orders of protection in October 2004. The Public Guardian's office also filed a petition for an accounting. Bilal opposed this petition. Given the apparent misappropriation of funds, the court froze the remainder of Hodges's assets. Bilal challenged that order.

On Rachell's behalf, Bilal sought to remove the Public Guardian as Hodges's temporary guardian. Bilal opposed the appointment of the Public Guardian as guardian and sought to have Rachell appointed instead. He also argued against the orders of protection.

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[1] According to this document, the net proceeds from the sale of Hodges's home were $207,999.62, of which $110,700 had purportedly been spent or was expected to be spent to modify Rachell's home for Hodges. This amount included, inter alia, $25,000 for wheel chair accessibility, $35,000 for an additional bedroom for Hodges, and $8,500 in "other fees/expenses." Hodges was not in a wheelchair. No additional bedroom had been constructed at Rachell's home, and Hodges had never lived in Rachell's house.

The Public Guardian's office ultimately filed a petition seeking to invalidate the power of attorney, as fraudulent. Bilal, on Rachell's behalf, opposed this petition. That petition was pending at the time of the hearing.

Bilal testified that he relied on the 2003 POA. He understood that, under the law, he could be liable if he did not rely on the POA. The 2003 POA was signed, notarized, and witnessed when presented to Bilal; he considered it valid. Bilal believed that the 2003 POA gave Rachell the authority to do everything that she asked him to do.

In Bilal's opinion, there was no conflict of interest because there was no attorney client relationship between him and Hodges. He considered Rachell, not Hodges, as his client. In addition, in Bilal's mind, every document he prepared benefited Hodges. The two women had a long-standing, close relationship. Bilal also noted that Rachell had been taking care of Hodges and wanted to continue doing so.

The parties object to certain to evidentiary and procedural rulings by the Hearing Board. The Hearing Board's rulings on evidentiary and procedural issues are reviewed for abuse of discretion. *In re Joyce*, 133 Ill. 16, 29, 549 N.E.2d 232, 139 Ill. Dec. 720 (1989); *In re Speizer*, No. 00 SH 49 (Review Board March 27, 2002), *petition for leave to file exceptions allowed, sanction modified*, No. M.R. 18161 (Sept. 18, 2002); *see generally In re Horne*, 97 CH 98 (Review Board Feb. 16, 2000), *approved and confirmed*, No. M.R.

16743 (June 30, 2000). An abuse of discretion occurs where *no* reasonable person would agree with the position adopted by the Hearing Board. *In re Wilson*, No. 98 CH 69 (March 23, 2001), *approved and confirmed*, No. M.R. 17518 (Sept. 20, 2001).

In relation to Count I, the Administrator sought to admit into evidence records relating to the criminal charges against Bilal. The Hearing Board sustained Bilal's objection, on the grounds that Bilal had obtained an order expunging the record of the incident. The Hearing Board declined to admit the expunction order, given the exclusion of the underlying records. The Administrator objects to these rulings.

The Administrator obtained the records of the criminal proceeding before the expunction order was entered and the expunction order was not directed to the Administrator. Therefore, the Hearing Board erred in excluding evidence of the court records and the expunction order. *In re Hayes*, No. 03 SH 113 (Review Board June 6, 2006), *petition for leave to file exceptions allowed, sanction modified*, No. M.R. 21046 (Sept. 21, 2006).

Bilal objects to the Hearing Board's decision to allow Officer Petrisha to testify about the incident leading to his arrest even though she was not originally named on the Administrator's disclosure of potential witnesses.

During discovery, Bilal produced records related to the criminal prosecution and a copy of the expunction order. However, in pleadings filed shortly prior to

hearing, Bilal objected to the admissibility of the court records of the criminal matter. This created the need to call a witness to testify concerning the underlying incident. Shortly thereafter, the Administrator filed a supplemental report under ARDC Rule 253 (Disc. Com. R. 253), disclosing Petrisha as a possible witness.

The purpose of sanctions for discovery violations is not to punish the offending party, but to insure fair discovery and a trial on the merits. *Sobczak v. Flaska*, 302 Ill. App. 3d 916, 926, 706 N.E.2d 990, 236 Ill. Dec. 116 (1st Dist. 1998). Determining what, if any, sanction is to be imposed depends on all the circumstances, including such factors as surprise to the opposing party and any prejudicial impact. *Sobczak*, 302 Ill. App. 3d at 926, 706 N.E.2d 990, 236 Ill. Dec. 116. The prejudicial impact of a late disclosure is particularly relevant in determining whether a Rule 253 violation warrants barring a witness's testimony. *See In re Marcanti*, No. 96 CH 001 (Review Board Oct. 16, 1997), *approved and confirmed*, No. M.R. 14249 (Jan. 29, 1998); *In re Kearns*, No. 94 CH 588 (Review Board Dec. 5, 1995), *approved and confirmed*, No. M.R. 12209 (March 26, 1996).

The Administrator disclosed Petrisha nine days prior to trial. As evident from the hearing transcript, Bilal was able to cross-examine Petrisha, and there was no apparent prejudice from the late disclosure. Further, the need to present witness testimony arose because of Bilal's conduct. The Hearing Board did not abuse its discretion in allowing Petrisha to testify.

Bilal contends that the Hearing Board erred in allowing Dr. Veres to testify by telephone. While this is an unusual procedure, it does not constitute reversible error in this case.

At the hearing, Bilal stated that he did not object to Dr. Veres testifying by telephone, rather than in person, provided that it could be authenticated that she was the person speaking by phone. A party waives objections to procedures in which he or she has acquiesced at hearing, *In re Petrulis*, No. 96 CH 546 (Review Board Dec. 9, 1999), *approved and confirmed*, No. M.R. 16556 (June 30, 2000), *including taking testimony by telephone. Saxton v. Toole*, 240 Ill. App. 3d 204, 212, 608 N.E.2d 233, 181 Ill. Dec. 160 (1st Dist. 1992).

Bilal contends that the Hearing Board accepted testimony from certain witnesses without giving him a reasonable opportunity to impeach them. Bilal's argument is based primarily on the exclusion from evidence of the transcripts of the witnesses' discovery depositions. Bilal also objects because these witnesses met with counsel for the Administrator prior to hearing. As Bilal cites no authority to support his arguments, we need not consider them. *See* ARDC Rule 302(i) (Dis. Com. R. 302(i); *In re Zurek*, No. 99 CH 45 (Review Board March 28, 2002), *petition for leave to file exceptions denied*, No. M.R. 18164 (Sept. 19, 2002). Further, Bilal extensively cross-examined all the witnesses at issue. He has not shown any prejudice from the Hearing Board's ruling. We find no abuse of discretion. *See In re Cagle*, No. 03 SH 14

(Review Board Feb. 22, 2005), *petition for leave to file exceptions denied*, No. M.R. 20140 (Sept. 20, 2005).

Bilal objects to an order barring Rachell from testifying because she declined to respond to questions at her discovery depositions.

Rachell invoked the Fifth Amendment during her initial discovery deposition. The Administrator filed a motion to compel. Rachell's attorney participated in the prehearing conference at which that motion was presented. The Hearing Board chair granted the motion to compel and allowed the Administrator to subpoena Rachell for a further deposition. The chair expressly permitted the second deposition to give Rachell the opportunity to testify; the chair stated that her testimony would be barred at hearing if she declined to do so.

At the second deposition, Rachell invoked the Fifth Amendment to the vast majority of the questions posed by counsel for the Administrator. Thereafter, the Hearing Board barred Rachell's testimony.

Generally, a respondent should be allowed the opportunity to present the Hearing Board with evidence in his or her defense. *In re Donaghy*, 393 Ill. 621, 625, 66 N.E.2d 856 (1946). However, Hearing Board decisions on evidentiary issues are reviewed for abuse of discretion. *In re Walsh*, No. 94 CH 653 (Jan. 2, 2000), *petition for leave to appeal allowed, sanction modified*, No. M.R. 16705 (June 30, 2000). No abuse of discretion appears here, given the opportunities allowed for Rachell to testify, the extent of the questions

as to which she invoked the Fifth Amendment, and the limited extent to which Bilal has shown actual prejudice in the Hearing Board's decision to bar her testimony.

Bilal objects to the Hearing Board's findings of misconduct as to Counts I and III. The Administrator objects to the Hearing Board's failure to find misconduct as to Count II.

The Administrator must prove the misconduct charged by clear and convincing evidence. *In re Winthrop*, 219 Ill. 2d 526, 542, 848 N.E.2d 961, 302 Ill. Dec. 397 (2006). While less stringent than proof beyond a reasonable doubt, clear and convincing evidence requires a high level of certainty, not merely a preponderance of the evidence. *Bazydlo v. Volant*, 164 Ill. 2d 207, 213, 647 N.E.2d 273, 207 Ill. Dec. 311 (1995); *People v. Williams*, 143 Ill. 2d 477, 484, 577 N.E.2d 762, 160 Ill. Dec. 437 (1990); *In re Stephenson*, 67 Ill. 2d 544, 556, 367 N.E.2d 1273, 10 Ill. Dec. 507 (1977). Suspicious circumstances are not enough to meet the Administrator's burden of proof. *In re Mitgang*, 385 Ill. 311, 52 N.E. 2d 807, 813 (1944).

The Hearing Board's factual findings are reviewed deferentially and are not reversed unless they are against the manifest weight of the evidence. *Winthrop*, 219 Ill. 2d at 542, 848 N.E.2d 961, 302 Ill. Dec. 397. A factual finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Winthrop*, 219 Ill. 2d at 542, 848 N.E.2d 961, 302 Ill. Dec. 397. The Review Board may

not overturn factual findings of the Hearing Board merely because a different conclusion is reasonable or because the Review Board disagrees with the Hearing Board's factual conclusions. *Winthrop*, 219 Ill. 2d at 542-43, 848 N.E.2d 961, 302 Ill. Dec. 397.

The reviewing tribunal, however, is responsible for correcting errors in the application of the facts to the law, *Winthrop*, 219 Ill. 2d at 543, 848 N.E.2d 961, 302 Ill. Dec. 397, and determining whether or not a particular set of facts constitutes the misconduct charged. *In re Discipio*, 163 Ill. 2d 515, 527, 645 N.E. 2d 906, 206 Ill. Dec. 654 (1994); *In re Owens*, 144 Ill. 2d 372, 377, 581 N.E.2d 633, 163 Ill. Dec. 479 (1991). Such issues are issues of law, *In re Ushijima*, 119 Ill. 2d 51, 57, 518 N.E.2d 79, 115 Ill. Dec. 548 (1987), to which a *de novo* standard of review applies. *In re Brodsky*, No. 01 CH 42 (Review Board Aug. 21, 2003), *approved and confirmed*, No. M.R. 19007 (Jan. 20, 2004); *see Discipio*, 163 Ill. 2d at 527, 645 N.E.2d 906, 206 Ill. Dec. 654.

In assessing the misconduct at issue in Count I, the Hearing Board properly considered whether the alleged solicitation incident fell within the scope of the question posed and Bilal's state of mind. *See In re Hynes*, No. 00 CH 51 (Review Board (Aug. 8, 2002), *petition for leave to appeal denied, charges dismissed*, No. M.R. 18360 (Nov. 26, 2002). The Hearing Board concluded that Question 16 clearly encompassed the incident at issue here. That conclusion is supported by the record. The Hearing Board also disbelieved Bilal's description of the underlying incident, believed

Petrisha's testimony, and concluded that Bilal's failure to disclose was purposeful. These are factual issues, within the province of the Hearing Board. *See In re Ingersoll*, 186 Ill. 2d 163, 710 N.E.2d 390, 237 Ill. Dec. 760 (1999). The findings of misconduct as to Count I are not against the manifest weight of the evidence.

Bilal asserts that the Hearing Board erred in finding, as to Count III, that he engaged in a conflict of interest. He contends that Rule 1.9(a)(1) was not violated as there was no substantial relationship between his representation of Rachell in the guardianship proceeding and his prior representation preparing documents for Hodges. Bilal also contends his representation of Rachell was not materially adverse to Hodges, as the two people loved each other and both wanted Hodges to live with Rachell.

Under Rule 1.9(a)(1), an attorney who has formerly represented a client in a matter may not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after full disclosure.

Bilal represented Hodges when he drafted the 2004 DPOA and the living trust and during the sale of her home. Before the Hearing Board, there was no dispute that the guardianship proceedings were substantially related to Bilal's representation of Hodges. The Hearing Board relied on the facts of the case and

Bilal's conduct in the guardianship proceedings to find that Rachell's and Hodges's interests were adverse and that Bilal's conduct did not further Hodges's interests. These conclusions are supported by the record.

An actual divergence of purpose is not required to demonstrate a conflict of interest; rather, the question is whether there is a potential for adversity and conflicting duties. *See In re Demuth*, 126 Ill. 2d 1, 533 N.E.2d 867, 127 Ill. Dec. 785 (1988); *In re LaPinska*, 72 Ill. 2d 461, 469, 381 N.E.2d 700, 21 Ill. Dec. 373 (1978). That standard was clearly met here.

Determining whether there is a substantial relationship between matters involves considering the scope of the prior representation, whether it is reasonable to infer that confidential information would have been given to a lawyer representing a client in such a matter, and whether such confidential information is relevant to issues in the subsequent representation. *In re Estate of Klehm*, 363 Ill. App. 3d 373, 380, 842 N.E.2d 1177, 299 Ill. Dec. 825 (1st Dist. 2006); *In re Carey and Danis*, Nos. 99 SH 67, 68 (Review Board Nov. 21, 2002), *petition for leave to file exceptions denied*, No. M.R. 18575 (May 22, 2003); *see Schwartz v. Cortelloni*, 177 Ill. 2d 166, 685 N.E.2d 871, 226 Ill. Dec. 416 (1997). Rule 1.9(a)(1) does not require proof that confidential information was actually received, but merely that it is reasonable under the circumstances to conclude that it could have been. *Gagliardo v. Caffrey*, 344 Ill. App. 3d 219, 231, 800 N.E.2d 489, 279 Ill. Dec. 421 (1st Dist. 2003). A substantial relationship can be found when the prior representation

involved the same parties and the same issues as the subsequent representation or where the respondent, in the prior representation, was intimately involved in matters that were the subject of the subsequent representation. *In re Ducey*, No. 01 SH 118 (Review Board Sept. 8, 2006), *petition for leave to file exceptions allowed*, No. M.R. 21234 (Sept. 18, 2007). In addition, a violation of Rule 1.9(a)(1) can be found where an attorney represents a person in preparing documents and later represents another party in litigation in which the validity of those documents is at issue. *In re Heldrich*, No. 02 CH 26 (Review Board June 28, 2004), *petition for leave to file exceptions denied*, No. M.R. 19630 (Nov. 17, 2004). In determining whether or not a substantial relationship exists, deference is given to the findings of the trier of fact. *Klehm*, 363 Ill. App. 3d at 380, 842 N.E.2d 1177, 299 Ill. Dec. 825; *Gagliard*, 344 Ill. App. 3d at 226, 800 N.E.2d 489, 279 Ill. Dec. 421.

The Hearing Board did not err in its findings of misconduct as to Count III.

The Administrator objects to the Hearing Board's conclusion that he did not prove, as to Count II, that Bilal breached his fiduciary duty to Hodges or engaged in a conflict of interest.

Count II charged that Bilal violated Rule 1.7(b) by representing a client when the representation may be materially limited by the lawyer's responsibilities to another client or a third person. The Administrator's theory was that Bilal engaged in misconduct by

having prepared documents for Hodges, specifically the 2004 DPOA, the living trust, and the warranty deed for the sale of Hodges's house, that benefited Rachell without having met or spoken with Hodges, ascertained her legal capacity, intentions, or best interests, and by failing to protect Hodges's interests when Rachell took substantial portions of the proceeds from the sale of Hodges's house.

The Hearing Board found that the Administrator had not presented clear and convincing evidence of a breach of fiduciary duty or conflict of interest essentially because Bilal was presented with a valid 2003 POA, which provided authority for the actions taken and documents drafted in relation to Count II. The Hearing Board noted that, even if Rachell's actions, particularly with regard to the proceeds of the sale of Hodges's home, were inappropriate, there was no evidence that Bilal was involved with, benefited from, or knew of Rachell's actions. The Hearing Board also observed that Bilal prepared the 2004 DPOA because the title company involved in the sale of Hodges's house required additional documentation.

The Administrator objects to the Hearing Board's observation that there was no evidence that the 2003 POA was invalid. As the Administrator notes, Dr. Veres's testimony does suggest that Hodges may have lacked the mental capacity to execute a valid power of attorney in August 2003. However, this is a disciplinary proceeding, not a proceeding seeking to invalidate Rachell's acts under the 2003 POA. In this case, the issue is not whether the 2003 POA was actually

valid, but whether it appeared valid when presented to Bilal. *Cf. Amcore Bank, N.A. v. Hahnaman-Albrecht, Inc.*, 326 Ill. App. 3d 126, 137, 759 N.E.2d 174, 259 Ill. Dec. 694 (2d Dist. 2001).

Bilal was not involved in preparing the 2003 POA. Instead, he was presented with a signed, notarized document that appeared to be a valid statutory short form power of attorney. The 2003 POA, by its own terms, was effective when Bilal received it. *See* 755 ILCS 45/3-3. There was no evidence that Bilal knew of any mental infirmities on Hodges's part. If he had, a heightened duty might have been found. *See In re Rosin*, 118 Ill. 2d 365, 515 N.E.2d 85, 92, 113 Ill. Dec. 276 (1987). Bilal was simply an independent third party when Rachell presented him with the 2003 POA.

When a power of attorney in substantially the statutory form is presented, third parties who rely in good faith on acts of the agent within the scope of the power may do so without fear of liability to the principal. 755 ILCS 45/3-1. The whole point of the statutory plan providing for the short form power of attorney is to enable people to appoint another to act on their behalf, even if the principal is incapacitated when the power is exercised. 755 ILCS 45/3-1. Third parties are not required to look behind a power of attorney to determine the extent of the principal's capacity to execute the document. *Cf.* 755 ILCS 45/2-8.

An attorney-client relationship arose between Hodges and Bilal when Rachell hired Bilal to draft documents for Hodges. *See Schwartz v. Cortelloni*, 177 Ill. 2d 166, 685 N.E.2d 871, 226 Ill. Dec. 416 (1997); *Simon v. Wilson*, 291 Ill. App. 3d 495, 509-10, 684 N.E.2d 791, 225 Ill. Dec. 800 (1st Dist. 1997). Given this relationship, Bilal owed Hodges a fiduciary duty. *In re Winthrop*, 219 Ill. 2d 526, 543, 848 N.E.2d 961, 302 Ill. Dec. 397 (2006). However, given the impact of the power of attorney and the Hearing Board's finding as to Bilal's good faith, the Hearing Board did not err in concluding that, in relying on the 2003 POA, Bilal did not breach his fiduciary duty to Hodges nor engage in a conflict of interest.

The Hearing Board accepted Bilal's testimony that he relied on the 2003 POA in preparing the remaining documents. The 2003 POA expressly authorized the agent to sell real estate belonging to the principal. Thus, Bilal's preparation of the deed and representation of Hodges at the closing were in furtherance of conduct that was within the scope of Rachell's authority under the 2003 POA. While the 2004 DPOA is not as clearly within Rachell's authority under the 2003 POA, the Hearing Board concluded that Bilal prepared this document to satisfy concerns of the title company, rather than to further an improper purpose by Rachell.

Significantly, the Hearing Board found no evidence that, at the time of the conduct at issue in Count II, Bilal was involved with or aware of any misconduct by, or evil intentions of, Rachell in relation to

Hodges's money. This is a highly significant factual finding in this case. The Hearing Board relied on this fact in concluding that the remaining misconduct at issue in Count II had not been proven. These factual findings support the Hearing Board's conclusions that the Administrator did not prove the misconduct charged in Count II. *See Winthrop*, 219 Ill. 2d at 546, 848 N.E.2d 961, 302 Ill. Dec. 397. Similarly, the fact that Bilal was not aware of any mental deficiencies on Hodges's part is a factor in his favor. *Winthrop*, 219 Ill. 2d at 547-48, 848 N.E.2d 961, 302 Ill. Dec. 397.

In finding that the Administrator did not prove that Bilal engaged in a conflict of interest as charged in Count II, the Hearing Board noted that, despite the family relationship between Bilal and Rachell, there was no evidence that Bilal's representation of Hodges was materially limited by this relationship or by any responsibilities to Rachell. This factual finding is likewise not against the manifest weight of the evidence.

The standard of review of the Hearing Board's factual findings is very deferential. *Winthrop*, 219 Ill. 2d 526, 848 N.E.2d 961, 302 Ill. Dec. 397. A different result would have been possible. *See e.g. In re Holst*, No. 01 CH 12 (Hearing Board April 10, 2002), *approved and confirmed*, No. M.R. 18175 (Sept. 19, 2002). However, this does not warrant overturning the Hearing Board's findings. The Hearing Board's factual findings, particularly as to Bilal's knowledge, state of

mind, and reliance on the 2003 POA support its conclusions as to the misconduct charged in Count II.

There are factors present in this case that clearly are not consistent with good, careful legal practice. In particular, Bilal never communicated directly with Hodges to ascertain her intentions. We do not condone this behavior, nor did the Hearing Board. The issue, however, is not whether Bilal acted consistently with "best practices," but whether his conduct constituted an ethical violation. For the reasons stated above, the Hearing Board did not err in finding that the Administrator did not prove the misconduct charged in Count II by clear and convincing evidence.

Both parties object to the Hearing Board's sanction recommendation. The Hearing Board recommended a suspension for eighteen (18) months and until Bilal completed the Illinois Professional Responsibility Institute course. The Administrator seeks to have the Review Board recommend a suspension for three years and until further order of the Court (UFO). Bilal seeks a reprimand or censure.

The Hearing Board's recommendation as to discipline is advisory. *In re Ingersoll*, 186 Ill. 2d 163, 178, 710 N.E.2d 390, 237 Ill. Dec. 760 (1999). In fashioning the proper sanction in any given case, the Review Board must consider each case based on its own particular facts and circumstances, while remaining aware that the system seeks to impose sanctions consistent with those imposed in other similar cases. *Ingersoll*, 186 Ill. 2d at 177-78, 710 N.E.2d 390, 237 Ill. Dec. 760;

In re Timpone, 157 Ill. 2d 178, 197, 623 N.E.2d 300, 191 Ill. Dec. 55 (1993). In imposing discipline, the purpose is not to punish the respondent, but to protect the public, to maintain the integrity of the profession, and to protect the administration of justice from reproach. *In re Spak*, 188 Ill. 2d 53, 719 N.E.2d 747, 241 Ill. Dec. 618 (1999); *Timpone*, 157 Ill. 2d at 197, 623 N.E.2d 300, 191 Ill. Dec. 55. The deterrent value of a sanction may be considered. *Discipio*, 163 Ill. 2d at 528, 645 N.E.2d 906, 206 Ill. Dec. 654. Aggravating and mitigating factors are to be considered. *In re Witt*, 145 Ill. 2d 380, 398, 583 N.E.2d 526, 164 Ill. Dec. 610 (1991). Sanctions cannot be based solely on such factors, as predictability and fairness require some consistency in sanctions for similar misconduct. *In re Saladino*, 71 Ill. 2d 263, 375 N.E.2d 102, 16 Ill. Dec. 471 (1978). However, differences between aggravating and mitigating factors in different cases can warrant different sanctions. *See In re Twohey*, 191 Ill. 2d 75, 91-92, 727 N.E.2d 1028, 245 Ill. Dec. 294 (2000).

Bilal engaged in two distinct forms of serious misconduct. Bilal engaged in misconduct in relation to Hodges, as charged in Count III. Bilal also made false statements on documents applying for admission to the bar.

Other respondents who have violated Rule 1.9(a)(1) have been suspended. *E.g.* In *In re Carey and Danis*, Nos. 99 SH 67, 68 (Review Board Nov. 21, 2002), *petition for leave to file exceptions denied*, No. M.R. 18575 (May 22, 2003) (six-month suspension); *In re*

Heldrich, No. 02 CH 26 (Review Board June 28, 2004), *petition for leave to file exceptions denied*, No. M.R. 19630 (Nov. 17, 2004) (nine-month suspension). Bilal also made false statements on his bar application. This alone is serious misconduct, *see In re Ascher*, 81 Ill. 2d 485, 499, 411 N.E.2d 1, 44 Ill. Dec. 95 (1980), *cert. denied*, 450 U.S. 919, 101 S.Ct. 1365, 67 L.Ed.2d 345 (1981), and warrants substantial discipline. *See e.g. In re Chandler*, 161 Ill. 2d 459, 641 N.E.2d 473, 204 Ill. Dec. 249 (1994) (suspension for three years and UFO); *In re Myles*, No. 96 CH 185 (Hearing Board Jan. 20, 1997), *approved and confirmed*, No. M.R. 13506 (May 30, 1997) (suspension for six months and UFO).

Bilal's misconduct was aggravated by the fact that, as the Hearing Board found, Bilal failed "to understand that these proceedings were about his conduct" and demonstrated a "complete failure to understand" his ethical obligations. *See In re Samuels*, 126 Ill. 2d 509, 535 N.E.2d 808, 817, 129 Ill. Dec. 43 (1989).

The eighteen-month suspension recommended by the Hearing Board strikes a proper balance between the seriousness of Bilal's misconduct and the aggravating mitigating factors present in this case. We agree with the Hearing Board's recommendation that Bilal complete the Illinois Professional Responsibility Institute, given his lack of understanding of his ethical obligations. *See In re Heldrich*, No. 02 CH 26 (Review Board June 28, 2004), *petition for leave to file exceptions denied*, No. M.R. 19630 (Nov. 17, 2004).

The Hearing Board found no basis on which to recommend that the suspension continue until further order of the Court (UFO), as sought by the Administrator. We agree. While a UFO has been added in some cases involving false statements on bar applications, *e.g. In re Chandler*, 161 Ill. 2d 459, 641 N.E.2d 473, 204 Ill. Dec. 249 (1994); *In re Myles*, No. 96 CH 185 (Hearing Board Jan. 20, 1997), *approved and confirmed*, No. M.R. 13506 (May 30, 1997), Bilal does not have prior discipline, as did the respondent in *Myles* and, according to the facts found by the Hearing Board, he did not engage in an elaborate scheme for personal gain, as did the respondent in *Chandler*. Bilal also had not demonstrated an attitude of contempt for his license or the disciplinary process, as did the respondent in *In re Holst*, No. 01 CH 12 (Hearing Board April 10, 2002), *approved and confirmed*, No. M.R. 18175 (Sept. 19, 2002). He did not personally steal money from his client and, but for his attorney fee, there is no evidence of any personal gain to Bilal from his misconduct in relation to Hodges. *Compare In re Garside*, No. 98 CH 105 (Hearing Board March 27, 2001), *petition to approve and confirm denied, sanction modified*, No. M. R. 17527 (June 29, 2001).

A UFO is designed to force the respondent to prove that he or she has remedied a significant problem before resuming practice. This case, while involving serious misconduct, does not present that type of a situation.

Heldrich, No. 02 CH 26 (Review Board June 28, 2004), *petition for leave to file exceptions denied*, No. M.R. 19630 (Nov. 17, 2004) (nine-month suspension). Bilal also made false statements on his bar application. This alone is serious misconduct, *see In re Ascher*, 81 Ill. 2d 485, 499, 411 N.E.2d 1, 44 Ill. Dec. 95 (1980), *cert. denied*, 450 U.S. 919, 101 S.Ct. 1365, 67 L.Ed.2d 345 (1981), and warrants substantial discipline. *See e.g. In re Chandler*, 161 Ill. 2d 459, 641 N.E.2d 473, 204 Ill. Dec. 249 (1994) (suspension for three years and UFO); *In re Myles*, No. 96 CH 185 (Hearing Board Jan. 20, 1997), *approved and confirmed*, No. M.R. 13506 (May 30, 1997) (suspension for six months and UFO).

Bilal's misconduct was aggravated by the fact that, as the Hearing Board found, Bilal failed "to understand that these proceedings were about his conduct" and demonstrated a "complete failure to understand" his ethical obligations. *See In re Samuels*, 126 Ill. 2d 509, 535 N.E.2d 808, 817, 129 Ill. Dec. 43 (1989).

The eighteen-month suspension recommended by the Hearing Board strikes a proper balance between the seriousness of Bilal's misconduct and the aggravating mitigating factors present in this case. We agree with the Hearing Board's recommendation that Bilal complete the Illinois Professional Responsibility Institute, given his lack of understanding of his ethical obligations. *See In re Heldrich*, No. 02 CH 26 (Review Board June 28, 2004), *petition for leave to file exceptions denied*, No. M.R. 19630 (Nov. 17, 2004).

The Hearing Board found no basis on which to recommend that the suspension continue until further order of the Court (UFO), as sought by the Administrator. We agree. While a UFO has been added in some cases involving false statements on bar applications, *e.g. In re Chandler*, 161 Ill. 2d 459, 641 N.E.2d 473, 204 Ill. Dec. 249 (1994); *In re Myles*, No. 96 CH 185 (Hearing Board Jan. 20, 1997), *approved and confirmed*, No. M.R. 13506 (May 30, 1997), Bilal does not have prior discipline, as did the respondent in *Myles* and, according to the facts found by the Hearing Board, he did not engage in an elaborate scheme for personal gain, as did the respondent in *Chandler*. Bilal also had not demonstrated an attitude of contempt for his license or the disciplinary process, as did the respondent in *In re Holst*, No. 01 CH 12 (Hearing Board April 10, 2002), *approved and confirmed*, No. M.R. 18175 (Sept. 19, 2002). He did not personally steal money from his client and, but for his attorney fee, there is no evidence of any personal gain to Bilal from his misconduct in relation to Hodges. *Compare In re Garside*, No. 98 CH 105 (Hearing Board March 27, 2001), *petition to approve and confirm denied, sanction modified*, No. M. R. 17527 (June 29, 2001).

A UFO is designed to force the respondent to prove that he or she has remedied a significant problem before resuming practice. This case, while involving serious misconduct, does not present that type of a situation.

For the foregoing reasons, we affirm the Hearing Board's findings of fact and misconduct and we recommend that Respondent-Appellant, Karris A. Bilal, be suspended for eighteen (18) months and until he completes the Illinois Professional Responsibility Institute.

Respectfully Submitted,

William R. Quinlan
John W. Rapp, Jr.
David F. Rolewick

Date Entered: 05 September 2008

STATE OF ILLINOIS
SUPREME COURT

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of January, 2009.

Present: Thomas R. Fitzgerald, Chief Justice

Justice Charles E. Freeman Justice Robert R. Thomas

Justice Thomas L. Kilbride Justice Rita B. Garman

Justice Lloyd A. Karmeier Justice Anne M. Burke

On the twentieth day of January, 2009, the Supreme Court entered the following judgment:

In re:

M.R.22687

Karris A. Bilal
150 N. Michigan Ave.,
Suite 2800
Chicago, IL 60601

Attorney Registration and Disciplinary Commission
05CH87

The petitions by the Administrator of the Attorney Registration and Disciplinary Commission and respondent Karris A. Bilal for leave to file exceptions to the report and recommendation of the Review Board are denied. Respondent is suspended from the practice of law for eighteen (18) months and until he completes the Illinois Professional Responsibility Institute course, as recommended by the Review Board.

Suspension effective February 10, 2009.

Respondent Karris A. Bilal shall reimburse the Client Protection Program Trust Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Order entered by the Court.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

IN WITNESS WHEREOF,
I have hereunto subscribed
my name and affixed the Seal
of said Court, this twentieth day
of January, 2009.

/s/ [Illegible] Clerk,
Supreme Court of the
State of Illinois